



Economic Impact Analysis Virginia Department of Planning and Budget

11 VAC 10-20-190 – Virginia Racing Commission Criteria for Unlimited Horse Racing Facilities June 2, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Pursuant to the Code of Virginia, the proposed changes will allow the Virginia Racing Commission (the commission) to alter the number of live racing days in the Commonwealth and require licensees to post a sign where a pari-mutuel wagering is conducted with a toll free number for "Gamblers Anonymous" or for other similar organizations providing assistance to compulsive gamblers. The proposed changes will also establish new racetrack, equipment, and safety specifications.

Estimated Economic Impact

These rules regulate unlimited horse racing in the Commonwealth. Currently, Colonial Downs located in New Kent is the sole entity with a license for the ownership and operation of a racetrack to conduct a horse race meeting with pari-mutuel wagering privileges in the Commonwealth. It has four satellite simulcast wagering facilities in Brunswick, Chesapeake, Hampton, and Richmond. Approximately 250 employees work permanently at the racetrack and the satellite facilities and about 250 persons work temporarily during the live race meetings. In

fiscal year 2002, total pari-mutuel handle was \$124 million, total attendance at all facilities was 523,216, and the number of racing days (including both live racing days and days of operation at satellite facilities) was 1,441.¹ The Commonwealth received approximately \$2.2 million in license tax revenues. Although these regulations apply potentially to all future racetracks and licensees in Virginia, the commission, at this time, does not expect any new applications in the foreseeable future.

One of the rationales for regulating horse racing activities is to ensure minimum health and safety levels during racing activities. Another, probably more important, rationale is to ensure fairness in pari-mutuel wagering. In the absence of regulatory requirements, it may not be in the best interest of an owner or operator licensee to provide these features. Thus, these regulations protect the interests of parties involved in horse racing. However, other than the conduct of wagering, horse racing is very similar to variety of many other sports competition activities. That is horse racing is a private business with the ultimate goal to make profits. Thus, from an economic point of view, the regulatory requirements must focus solely on ensuring minimum levels of health and safety and fairness in wagering. The economic value of horse racing to Virginia will likely be maximized when all commercial aspects of horse racing business are left to the discretion of the licensee so that it can maximize profits.

During this regulatory review process, DPB notes that some of the current requirements as well as some of the proposed requirements are well beyond the necessary government involvement in ensuring health and safety and fairness in wagering. These requirements seem to interfere with the commercial aspects of constructing or operating a racetrack and will hinder the ability of a licensee to make profit-maximizing decisions in a competitive market.

One very clear example of interfering with commercial aspect of racing activities is to require a minimum number of live racing days that the licensee must conduct in the Commonwealth. This requirement is established in the Code of Virginia. Prior to 2000, a license holder was required to schedule at least 150 live racing days in the Commonwealth each year. There does not appear to be an economic rationale for this requirement. The number of racing days should be a decision made by the licensee based on the demand in the Commonwealth. The market in Virginia can support only a certain number of live races for a

¹ Source: Virginia Racing Commission, Annual Report, Fiscal Year 2002.

profitable operation. In response to market forces, a licensee will choose an operation level that maximizes its expected profits (or minimizes losses). It is also known that the profit maximizing level of horse racing activity maximizes the total welfare to customers and the licensee, hence to the Commonwealth.

One of the proposed changes will incorporate statutory changes occurred in 2000 and 2003 that removed the minimum racing days requirement. In 2000, General Assembly amended the section 59.1-369 of the Code of Virginia providing authority to the commission to alter the number of racing days until 2005 and later in 2003 removed the sunset requirement. After the statutory change in 2000, the actual number of live racing days decreased from 150 to about 55 - 60 days at Colonial Downs. The significant decrease in the number of actual live racing days after 2000 indicates that 150 live races was probably much more than the profit maximizing level of live racing activity. In fact, according to the commission, Colonial Downs was break-even last year after many years of losses. This experience strongly suggests that the flexibility to decide on the number of live racing days probably provided significant economic benefits to the licensee. As mentioned before, an economic benefit to the licensee also contributes to total welfare of the Commonwealth. Thus, removing any regulatory restrictions on the commercial decisions that should be made freely by the licensee probably created significant net benefits to the licensee and thus the Commonwealth.

A number of other proposed changes will update the racetrack, equipment, and safety standards. The substantive changes include requiring submission of a certified report on the grade and measurement of the racing surface, establishing a number of turf course, main track, and distance poll construction specifications, requiring barns to have hot and cold water, be ventilated, and properly drained, requiring a sauna or steam room in the jockey's room, having an adequate number of assistant starters and back up equipment for flat races, requiring two calibrated electronic photo finish devices, providing stewards the ability to direct the video camera operator to videotape any action during racing, requiring an electronic timing device capable of recording accurately to the hundredths of a second, providing adequate lighting for participants, racehorses, and the patrons, establishing equine and human ambulance specifications, prohibiting horse riding without a protective helmet and the chinstrap buckled, and prohibiting racing or exercising without a protective safety vest.

Among these, the commission indicates that the racetrack specifications are the most costly and estimates the additional costs to be anywhere from \$10 to \$20 million which is probably in the neighborhood of 10% of the total cost to build a new racetrack such as the Colonial Downs. On one hand, these changes would increase cost of building new facilities and discourage a potential licensee to construct a racetrack in Virginia. On the other hand, many of the changes could also improve safety and attract more horse owners and patrons to the races in the Commonwealth both of which are desirable for a potential licensee. According to the commission, the Colonial Downs racetrack already meet these proposed specifications and no racetrack is expected to be built in the Commonwealth in the foreseeable future. Thus, the proposed standards are not anticipated to create any significant economic effects at this time.

However, some of these requirements appear to interfere with the commercial aspects of owning or operating a racetrack and therefore are more likely to produce an economic loss than a gain. As discussed before, the focus of the regulatory requirements should be limited to providing health and safety and fair wagering. For example, it is difficult to understand how requiring a sauna or steam room in the jockey's room improves health, safety, or ensures fair wagering. A decision to built a sauna or a steam room appears to be strictly a commercial decision and should be left to the discretion of the licensee. If the licensee anticipates that it would contribute to its profits, then it may decide to build one, as is the case with Colonial Downs. However, another potential licensee may wish to operate a racetrack without one. Since some of these requirements seem to interfere with decision making ability of the licensee to maximize profits without contributing to health, safety, and fair wagering, they are not justified from an economic point of view and are bound to introduce excess compliance costs on the licensee, reducing total welfare in Virginia. Thus, DPB suggests reviewing these proposed racetrack, equipment, and safety standards to determine whether they protect health, safety, and ensure fairness in wagering and upon this review eliminate the ones that do not pass this test.

Finally, another statutory change to the section 59.1-369 of the Code of Virginia in 1998 requires a licensee to post a toll free number where pari-mutuel wagering is conducted for "Gambler Anonymous" or for a similar organization assisting compulsive gamblers. Pursuant to this change, the required number have been posted where wagering takes place and included in the race program since 1998. The main benefit of this change is providing access information to compulsive gamblers if they seek help. The cost of producing and posting the signs is estimated

to be very small. This requirement is already being enforced in practice as well and therefore no significant economic effect is expected when this amendment is incorporated in to the regulations.

Businesses and Entities Affected

The proposed regulations primarily apply to owner or operator licensees who are authorized to conduct a horse race meeting with pari-mutuel wagering privileges. Currently, Colonial Downs is the only entity with an owner and operator license in the Commonwealth. In addition, employees, particularly jockeys and exercise riders, horse owners, and people attending races or placing wagers may be indirectly affected. There are approximately 500 employees working permanently or temporarily at the racetrack or satellite facilities. Of these, it is estimated that approximately 40 are jockeys and about 80 are exercise riders at a race meeting. The number of horse owners involved in racing activities is about 1,947 annually. The total attendance at the racetrack and the satellite facilities was 523,216 in fiscal year 2002.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth. However, the Colonial Downs racetrack and satellite facilities are located in New Kent, Brunswick, Chesapeake, Hampton, and Richmond.

Projected Impact on Employment

The proposed changes are not anticipated to have an effect on employment at this time either because they are already implemented or because no racetrack is expected to be built in the near future.

Effects on the Use and Value of Private Property

Similarly, no significant effect on the use and value of private property is expected upon promulgation of the proposed amendments.